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SENATE BILL 2354 By  
Fowler

HOUSE BILL 2651  
By Turner (Ham)

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 3, Part 1 and Title 39, Chapter 14, Part 1, relative to nuisances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 29-3-101, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

29-3-101.

(a) As used in this section:

(1) "Lewdness" includes all material of lewd sexual conduct or live exhibition as defined in §39-17-1002, and includes, but is not limited to, possession, sale or exhibition of any obscene material, photographs, videotapes or films as defined in §39-17-902;

(2) "Nuisance" means that which is declared to be such by other statutes and in addition thereto means any place in or upon which the following are carried on or permitted:

(A) lewdness;

(B) prostitution;

- (C) promotion of prostitution;
- (D) patronizing prostitution;
- (E) unlawful sale of intoxicating liquors;
- (F) unlawful sale of any regulated legend drug, narcotic or other controlled substance;
- (G) unlawful promotion or aggravated promotion of gambling;
- (H) any sale, exhibition or possession of any material that has been determined by a court of competent jurisdiction to be obscene or possession with intent to exhibit, sell, deliver or distribute matter or materials in violation of §§39-17-901 - - 39-17-908, §39-17-911, §39-17-914, §39-17-918, or §§39-17-1003 - - 39-17-1005; or
- (I) habitual or recurring fighting or breaches of the peace.

“Nuisance” includes personal property, contents, furniture, fixtures, equipment and stock used in or in connection with the conducting and maintaining any such place for any such purpose.

(3) “Person” means and includes any individual, corporation, association, partnership, trustee, lessee, agent or assignee; and

(4) “Place” means and includes any building, enclosure or vehicle, or separate part or portion thereof, or the ground itself.

(b) Any person who uses, occupies, establishes or conducts a nuisance, or aids or abets therein, and the owner, agent or lessee or any interest in any such nuisance together with the persons employed in or in control of any such nuisance by any such owner, agent or lessee is guilty of maintaining a nuisance, and such nuisance shall be abated as provided in this section.

(c) All places or other property used in or in connection with the maintaining or conducting of a nuisance are subject to forfeiture to the state by order of a court having jurisdiction upon application by any of the officers or persons authorized by §29-3-102 to bring action for the abatement of such nuisance; provided, that seizure for the possession of obscene matter shall be in accordance with §§39-17-901- -39-17-908 and seizure for violations of §§39-17-1003- -39-17-1005 shall be in accordance with §§39-17-1006- -39-17-1007. Any property so forfeited shall be disposed of by public auction or as otherwise provided by law.

(d)

(1) Notwithstanding the foregoing, any vehicle used in the commission of a person's second or subsequent violation for patronizing prostitution or promoting prostitution, including violations of any statute in any other state prohibiting patronizing prostitution or promoting prostitution, is subject to immediate seizure by a law enforcement officer and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2.

(2) In order for the provisions of subdivision (d)(1) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one (1) of the previous violations must occur on or after July 1, 2002, and the second offense after July 1, 2002, must occur within five (5) years of the first offense occurring after July 1, 2002.

(3) It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent violation for

patronizing or promoting prostitution is to prevent persons from driving on Tennessee highways and attempting to patronize or promote prostitution. There is a reasonable connection between the remedial purpose of this section, reducing the incidence of patronizing or promoting prostitution from a motor vehicle, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to patronizing or promoting prostitution, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove an instrument from the hands of individuals who have demonstrated a pattern of patronizing or promoting prostitution from a motor vehicle.

(4) Only P.O.S.T.-certified or state-commissioned law enforcement officers shall be authorized to seize such vehicles under this section.

(e) Other than as set forth in subsection (d), after payment of all court costs and all costs of abatement of the nuisance incurred by any local governmental entity, all moneys from such forfeiture and all proceeds realized from the enforcement of this section shall be paid equally into the general funds of the state and the general funds of the political subdivision or other public agency, if any, whose officers made the seizure, except as otherwise provided by law.

SECTION 2. This act shall take effect July 1, 2002, the public welfare requiring it.